

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3065 OF 2005

Lehar Communication Pvt.Ltd. & Ors. ..Petitioners.
V/s.

State of Maharashtra & Anr. ..Respondents.

Mr.Vivek Kantawala i/b. Vivek M. Sharma & Gautam
Panchal for petitioners.

Mr.Rajesh More, APP for State.

Mr.Nitin V.Gangal for respondent No.2.

CORAM: A.M.KHANWILKAR, J

DATE : DECEMBER 23, 2005.

P.C. :

1. Heard counsel for the parties.
2. Arguable questions are raised.
3. Rule. Rule made returnable forthwith by consent.
4. Mr. Rajesh More, APP waives notice for respondent No.1 State and Mr.Nitin V. Gangal waives notice for respondent No.2.
5. As short question is involved, petition is taken up for final disposal by consent.

6. It is not necessary to advert to all the aspects of the matter. Suffice it to observe that respondent No.2 instituted complaint being criminal case No.1679/SS/2004 before the Additional Chief Metropolitan Magistrate, Ballard Pier, Mumbai, now transferred to the Small Causes Court against the petitioners for offence under section 138 of the Negotiable Instruments Act, 1881. From the order passed by the lower court, which is subject matter of challenge in present petition dated 9th June, 2004, it is amply clear that there was delay in filing the complaint. The court by the said order not only condoned the delay but also issued process against the petitioners. The grievance of the petitioners is that the delay in filing complaint could not have been condoned without giving opportunity to the petitioners to oppose the same. That procedural requirement has not been fulfilled by the trial court for which reason alone the order in question cannot be sustained. If that order is set aside, all steps taken on the basis of such illegal order will have to be considered as effaced from the record and the complaint will have to be restored to its original position prior to 9th June, 2004, so that same can proceed on the point of condonation of delay after

giving opportunity to the petitioners to be heard in that behalf.

7. I find substance in the submission canvassed on behalf of the petitioners. Indeed, the trial court has ample power to condone the delay in filing of the complaint but that does not mean that the delay can be condoned without giving notice to the other side, who is likely to be directly or indirectly affected by the said order. On this count alone, the order dated 9th June, 2004 will have to be set aside and the complaint be restored to the file to its original position as on 9th June, 2004, so that the Magistrate can proceed in accordance with the law after giving opportunity to the petitioners to be heard on the point of condonation of delay.

8. Counsel for the respondent No.2 submits that in that case, time-bound programme be prescribed for the trial court to consider the request of the respondent No.2 for condonation of delay in filing complaint.

9. Accordingly, impugned order dated 9th June, 2004 is set aside and the application is restored to file of the concerned court to its original number to

be proceeded further in accordance with the law. The court below may consider question of condonation of delay as expeditiously as possible preferably within six weeks from the receipt of the writ of this court.

10. Both the parties agreed to appear before the trial court on 12th January, 2006 at 11 a.m. so that the lower court may pass appropriate direction as may be advised. In the event, prayer for condonation of delay is accepted by the lower court, the lower court may proceed to pass further orders as may be required for early disposal of the case.

11. Petition disposed of on the above terms.